

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 15th day of February, two thousand twelve.

PRESENT:

PIERRE N. LEVAL,
JOSÉ A. CABRANES,
RAYMOND J. LOHIER, JR.,
Circuit Judges.

JIN RONG CHEN,
Petitioner,

v.

10-4727-ag
NAC

ERIC H. HOLDER, JR., UNITED STATES
ATTORNEY GENERAL,
Respondent.

FOR PETITIONER: Theodore N. Cox, New York, New York.

FOR RESPONDENT: Tony West, Assistant Attorney General; Anthony P. Nicastro, Senior Litigation Counsel; Drew C. Brinkman, Trial Attorney, Office of Immigration Litigation, United States Department of Justice, Washington, D.C.

1 UPON DUE CONSIDERATION of this petition for review of a
2 Board of Immigration Appeals ("BIA") decision, it is hereby
3 ORDERED, ADJUDGED, AND DECREED, that the petition for review
4 is DENIED.

5 Petitioner Jin Rong Chen, a native and citizen of the
6 People's Republic of China, seeks review of a October 29,
7 2010, decision of the BIA denying her motion to reopen her
8 removal proceedings. *In re Jin Rong Chen*, No. A099 667 841
9 (B.I.A. Oct. 29, 2010). We assume the parties' familiarity
10 with the underlying facts and procedural history in this
11 case.

12 We review the BIA's denial of a motion to reopen for
13 abuse of discretion. See *Ali v. Gonzales*, 448 F.3d 515, 517
14 (2d Cir. 2006). An alien seeking to reopen proceedings is
15 required to file a motion to reopen no later than 90 days
16 after the date on which the final administrative decision
17 was rendered. See 8 U.S.C. § 1229a(c)(7)(C)(i); 8 C.F.R.
18 § 1003.2(c)(2). There is no dispute that Chen's motion to
19 reopen, filed in April 2010, was untimely because the BIA
20 issued a final order of removal in March 2009. See 8 U.S.C.
21 § 1229a(c)(7)(C)(i); 8 C.F.R. § 1003.2(c)(2).

22 Chen contends, however, that the Chinese government's
23 recent crackdown on underground churches in Fujian Province

1 constitutes a material change in country conditions,
2 excusing the untimeliness of her motion to reopen. See
3 8 U.S.C. § 1229a(c)(7)(C)(ii). Moreover, Chen argues that
4 the BIA abused its discretion by ignoring and
5 misinterpreting evidence showing a systematic increase in
6 the Chinese government's repression of underground churches.

7 The BIA's determination that Chen failed to establish a
8 material change in country conditions is supported by
9 substantial evidence. See *Jian Hui Shao v. Mukasey*, 546
10 F.3d 138, 171 (2d Cir. 2008). In considering country
11 conditions in China, the BIA reasonably relied on the
12 evidence submitted in support of Chen's motion to reopen to
13 conclude that "during the years leading up to [her merits]
14 hearing, there was significant religious repression in
15 China." See 8 C.F.R. § 1003.2(c)(3)(ii); *In re S-Y-G-*, 24
16 I. & N. Dec. 247, 253 (B.I.A. 2007) ("In determining whether
17 evidence accompanying a motion to reopen demonstrates a
18 material change in country conditions that would justify
19 reopening, [the BIA] compares the evidence of country
20 conditions submitted with the motion to those that existed
21 at the time of the merits hearing below."). For example, as
22 noted by the BIA, Chen's evidence reflected that, at the

1 time of her underlying proceedings, the Chinese government:
2 sent priests to labor camps for reeducation; increased its
3 crackdown on Christians, who were, at times, jailed,
4 tortured, and beaten to death; and cracked down on
5 underground churches and targeted church leaders with
6 criminal accusations.

7 Notwithstanding Chen's argument to the contrary, the
8 BIA did not misinterpret her country conditions evidence.
9 *See Siewe v. Gonzales*, 480 F.3d 160, 169 (2d Cir. 2007)
10 (finding that as long as an inference "is tethered to the
11 evidentiary record, we will accord deference to the
12 finding"). In finding no change in country conditions, the
13 BIA determined that "[w]hile [Chen's] evidence indicates
14 that the number of incidents reported involving Christians
15 may have increased after her hearing, the evidence further
16 shows that unregistered religious groups and their
17 activities have also increased." Although Chen takes issue
18 with the BIA's inference that any increase in religious
19 repression in China is a function of an increase in
20 religious activities rather than any change in the Chinese
21 government's level of enforcement, it is not our role to
22 determine which possible inference is the most plausible.

1 See *Siewe*, 480 F.3d at 160 ("support for a contrary
2 inference – even one more plausible or more natural – does
3 not suggest error").

4 Similarly, Chen's argument that the BIA ignored
5 evidence demonstrating a material change in country
6 conditions in China is also without merit. While Chen
7 argues that the BIA failed to consider her China Aid Report
8 and an internet article purportedly showing a systematic
9 increase in the Chinese government's repression of
10 underground churches, the agency is presumed to have "taken
11 into account all of the evidence before [it], unless the
12 record compellingly suggests otherwise," *Xiao Ji Chen v.*
13 *U.S. Dep't of Justice*, 471 F.3d 315, 337 n.17 (2d Cir.
14 2006), and is not required to "expressly parse or refute on
15 the record each individual argument or piece of evidence
16 offered by the petitioner," *Jian Hui Shao*, 546 F.3d at 169
17 (quotation omitted). Here, the record does not suggest that
18 the BIA failed to consider Chen's evidence, as the China Aid
19 Report does not include any statistics for Chen's home
20 province of Fujian and was explicitly cited by the BIA in
21 its decision, and the task of resolving conflicts in the
22 record evidence, lies "largely within the discretion of the
23 agency," see *Jian Hui Shao*, 546 F.3d at 171. As a result,

1 the BIA's country conditions' determination is supported by
2 substantial evidence, and the denial of Chen's motion to
3 reopen was not an abuse of discretion. See 8 U.S.C.
4 § 1229a(c)(7)(C)(ii); *Ali*, 448 F.3d at 517.

5 Because the BIA did not reach the issue of Chen's *prima*
6 *facie* eligibility for relief, we decline to consider Chen's
7 arguments concerning the adequacy of her *prima facie*
8 showing.

9 For the foregoing reasons, the petition for review is
10 DENIED. As we have completed our review, any stay of
11 removal that the Court previously granted in this petition
12 is VACATED, and any pending motion for a stay of removal in
13 this petition is DISMISSED as moot. Any pending request for
14 oral argument in this petition is DENIED in accordance with
15 Federal Rule of Appellate Procedure 34(a)(2), and Second
16 Circuit Local Rule 34.1(b).

17 FOR THE COURT:
18 Catherine O'Hagan Wolfe, Clerk
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